

Internal Revenue Service
Appeals Office
1352 Marrows Road, Suite 104
Newark, DE 19711-5445

Date: MAR 27 2009

Number: 200911045
Release Date: 3/13/2009

UIL: 501.03-01

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

AP:PB:LA:JW

In Re:

EO Revocation

Tax Period(s) Ended:

12/31/20 , 20 , 20

Form Number

1120

Employer Identification Number

CERTIFIED MAIL

Last Day to File a Petition with the
United States Tax Court: JUN 26 20

Dear :

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code. It is determined that you are no longer recognized as exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code, effective January 1, 2002.

Our adverse determination was made for the following reason(s):

You were not operated exclusively for charitable, educational, or other exempt purposes. More than an insubstantial part of your activities were in furtherance of a non-exempt purpose. In pursuing such non-exempt purpose, you served private interests rather than public interests.

Contributions to your organization are not deductible under code section 170.

You are required to file Federal income tax returns on the form indicated above.

If you decide to contest this determination under the declaratory judgment provisions of code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed before the 91st (ninety-first) day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition from the United States Tax Court, write to United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217.

The last day for filing a petition for declaratory judgment is JUN 26 20.

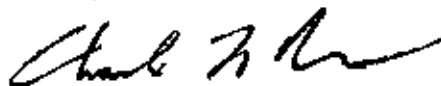
We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this notice of deficiency. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"*, for Taxpayer Advocate telephone numbers and addresses.

Thank you for your cooperation.

Sincerely,



CHARLES FISHER
TEAM MANAGER

Enclosures:

Notice 1214 *Helpful Contacts for your Deficiency Notice*



**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

DEPARTMENT OF THE TREASURY
Internal Revenue Service

June 26, 2008

Taxpayer Identification Number:

Form:
990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:
Telephone:
Fax:

Certified Mail - Return Receipt Requested

Dear ,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

Letter 3515 (04-2003)
Control Number 945007

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

804-916-3501

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Martha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892 & 3498
(688-A Report of Exam.
was along with 200212)

Letter 3518 (04-2002)
Catalog Number 34901F

This report supersedes our report dated 08/22/2008

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ISSUES

1. Are the activities conducted by xxxxx exclusively charitable, religious, or educational as required for organizations exempt under IRC §501(c)(3)?
2. Should the exempt status of xxxxx be revoked?

FACTS

xxxx (xxx) was established by Articles of Incorporation filed March 22, 1994. The Articles of Incorporation stated that the purpose of the xxxxx was to "foster national or international amateur sports competition (excluding the provision of athletic facilities or equipment); or for the prevention of cruelty to children or animals, all within the meaning of IRC §70(c)(2)". The document limited the purposes to those that are exclusively for the following purposes: religious, charitable, scientific, literary or educational purposes as qualifies under IRC § 501(c)(3).

Per the Form 990 for tax year ending 12/31/20 , Part III Statement of Program Service Accomplishments states xxxxx's primary exempt purpose as "Music Evangelization". Description of exempt purpose achievements states to "provide concerts with bands with a positive influence in the predominately negative alternative secular market, and provide outreach through the message in the music".

The corporation shall have no members. The numbers of directors constituting the initial Board of Directors was three and were to serve until the first annual meeting of the directors or until person's successor shall be duly elected and qualified. Those directors were xxxxx, xxxxx and xxxxx. xxxxx provided a current list of the board of directors with an information sheet of the director's qualifications.

The Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, provided by the xxxxx was signed and dated by xxxxx as Secretary/Treasurer on 05/20/94. According Form 1023, xxxxx is organized to promote alternative Christian music (i.e. not adult Christian contemporary music) in secular venues for the purpose of evangelization. Therefore the following objectives:

- 1) To become a positive influence in the predominately negative alternative secular market.
- 2) To provide outreach through the message in the music and the sales of CD's to individuals who do not know God's truth and

This report supersedes our report dated 06/22/2006

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- 3) to provide alternative Christian concerts with the goal of interesting Christians in this unique musical style which can then help them relate better to non-Christians.

The organization expected to receive its support from non-interest bearing promissory notes from individuals for start up capital, sale of tickets to concerts and contributions by individuals.

The determination letter was dated 05/11/1995 from the Washington, DC office. It stated if your source of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change of your exempt status.

Prior to issuing the determination letter, IRS sent letter to organization dated 03/30/95 in regard to telephone conversation on 03/28/05 from xxxxx. The letter requested that organization submit certain information regarding application for recognition of exemption. Letter specifically asked for the following information:

- (1) Financial statements for 18 , showing a breakdown for each separate concert,
- (2) Copies of contracts with clubs, pubs, or bars, if any or descriptions of verbal agreements, and any programs or descriptions of concerts,
- (3) Your definition or interpretation of alternative Christian music,
- (4) A statement concerning who you are trying to reach with your programs, considering that tickets are being sold primarily at Christian bookstores, churches, and secular record shops,
- (5) How you distinguish yourself from a mere booking agent for Christian bands,
- (6) The reasons for small concerts,
- (7) Whether the clubs, pubs and bar continue with the regular business during your concert, and
- (8) A statement as to whether you would be willing to accept foundation status under IRC § 508 (a)(2) of the Code in the event you are recognized as exempt under IRC § 501 (c) (3).

The organizations response included description of alternative music is defined "by its departure from Top 40 popular rock music". "We have four types of individuals we are trying to reach. a) Christians who are already interested in alternative music. b) Christians who aren't aware of or interested in alternative music. c) Christians who are not doing well in their own faith and d) Non-Christians who enjoy alternative music.

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During the initial interview with Power of Attorney, XXXXX stated activities changed sometime in 2002. XXXXX also stated that around 2000 the organization was approached by XXXXX which is a for-profit entity to help them promote their concert series of predominately secular music. XXXXX would then be allowed to book the opening act of a Christian artist and would receive a management fee/contribution for their contribution to concerts.

The organization provided a contract letter dated January 22, 2002 from XXXXX regarding meeting with XXXXX regarding agreement. Letter stated that a synopsis of what was spoken of and how they would like to work with . It mentions a separate agreement needs to be drawn up regarding the XXXXX other events including XXXXX and XXXXX. The following were items mentioned in letter regarding items discussed in meeting. POA XXXXX provided this as the contract between XXXXX and XXXXX.

- 1) Booking - XXXXX will serve as the booking agent for the 2002 XXXXX season (consisting of 15 concert with a 16th added for XXXXX) and the XXXXX - 4 concerts. XXXXX would have 5 guaranteed weeks of booking openers for XXXXX and two others.
- 2) XXXXX would be paid in two ways: 1) Sliding scale - 999 patrons or less attending concerts \$350.00; 1,000 - 1,999 patrons \$500; 2000 - 2,999 patrons \$750; 3000 and above - \$1000. If rain is a factor, then XXXXX will be paid \$500 unless the numbers attending are more than the \$500.00 option and 2) Added Incentive - for every dollar that is saved on a band, XXXXX will receive 10% of that saving.
- 3) Management - XXXXX will assist managing the event in every area where the band is concerned including: 1) advancing the date - production, catering, accommodations, scheduling, etc. 2) stage managing - manage all aspects of performance, needs such as towels, water etc.

Remaining language in letter/contract involves XXXXX involvement in transportation, promotion and sponsorship for which they would receive 10% commissions.

The organization also provided a contract entered into with XXXXX (XXXXX which Executive Director, XXXXX is 50% owner of) dated 03/30/2003, which XXXXX whereby the organization agreed to sponsor a series of public events entitled "XXXXX" (the "Event") from April 2003 through October 2003. XXXXX duties also included:

- 1) Event coordination - which organization was responsible for managing the finances of the event, including but not limited to book-keeping, rental agreement

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of property, court approvals and event staffing requirements. Any and all income realized from shall be deposited directly into xxxxx bank accounts. If necessary promoter (xxxxx) agreed to provide financial assistance to xxxxx to ensure event viability by covering expense and artist deposits and xxxxx agreed to reimburse xxxxx.

- 2) Responsibilities of xxxxx - as sponsor of the Event, xxxxx shall secure the ABC (Alcohol Beverage Control) license for the Event and assist Promoter, if necessary, with any government approvals. In addition, xxxxx shall provide volunteer manpower for the Event.
- 3) Profits from the Sale of Alcoholic Beverages - all net profits derived from the sale of alcoholic beverages at the Event shall belong to xxxxx.
- 4) Payment of Expenses - ABC Reporting - xxxxx shall have the responsibility to account for all the income and expenses for the Event and report such amounts to the xxxxx Alcoholic Beverage Control Board.
- 5) Payment of Advance Expenses and Deposits - Promoter (xxx) on behalf of xxxxx shall pay advance Event expenses and artist deposits for the Event which xxxxx shall reimburse the Promoter.
- 6) Payment of Regular Expenses - Promoter (xxx) shall pay on behalf of xxxxx all regular Event expenses and shall be reimbursed by xxxxx from the gross proceeds of the Event.

Remaining documentation in contracts deal with compensation to promoter proceeds to xxxxx, liability insurance and application of ABC license.

The Organization also has non-concert series it promotes around the xxxxx and surrounding areas with and other venues for which organization did not provide contracts.

Minutes of Board of Director meeting dated December 21, 2001, the board consisted of 4 members: xxxxx, xxxxx, xxxxx and xxxxx. Two were not present: xxxxx and xxxxx. Financial report was given by xxxxx. Election of Officers and Director: President, xxxxx; Vice-President, xxxxx and Secretary/Treasurer, xxxxx. Discussion regarding 2002 events of 8 concerts lined up this far. Other items of discussion were report on festival, liability issues, fundraising report and partner in ministry xxxxx.

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There was no evidence of any Board meetings during the 20, 2C or 20.

provides funds to maintain a website at XXXX. An archive of that site provides information concerning upcoming venues and how to obtain tickets. There is also a calendar of upcoming performances and links to information and tickets to those performances.

No indication on website that this a non-profit organization or any information relating to organization exempt purpose. No indication that events are for "evangelism" or "Christian" related.

Organization applied for special banquet license to sell alcoholic beverages at several activities held during 20 thru 20. List of licenses applied for at the XXXX, Dept. of Alcoholic Beverage Control (ABC) show numerous licenses obtained during 20 thru 20. According to ABC special licenses are usually for 1 time, annual or occasional events. Organization also must state exempt purpose for obtain license. Organization applied for the following licenses: In 20 - 33 one day licenses, 2C - 37 one day licenses and 20 - 25 one day licenses.

LAW

IRC §501(c)(3) reads as follows:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

The pertinent Treas. Regs. are:

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Treas. Reg. §1.501(c)(3)-1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Treas. Reg. §1.501(c)(3)-1(a) *Organizational and operational tests.* (1) In order to be exempt as an organization described in IRC §501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. §1.501(c)(3)-1(b)(1)(ii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not meet the organizational test regardless of the fact that its articles may state that such organization is created for charitable purposes within the meaning of section 501(c)(3) of the Code.

Treas. Reg. §1.501(c)(3)-1(b)(1)(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Treas. Reg. §1.501(c)(3)-1(c) *Operational test-(1) Primary activities.* An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

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GOVERNMENT POSITION

While advancement of religion is a purpose allowable under IRC §501(c)(3), to satisfy the operational test, an organization must be operated exclusively for one or more of the exempt purposes specified in IRC §501(c)(3).

The organization does not operate exclusively for one or more of the exempt purposes specified in IRC §501(c)(3) of: religious, charitable, scientific, testing for public safety, literary, educational, fostering national or international sports competition and prevention of cruelty to children or animals.

Consistence with Treas. Reg. §1.501(c)(3)-1(c)(1) organization will be regarded as operating exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes.

The organization does engage in some of the exempt activities reported on the Form 1023. However, these activities are insubstantial in relationship to substantial non-exempt activities.

With the assistance of the organization, each concert was analyzed to categorize as religious or secular in nature. The analysis revealed a third category where a religious group opened the concert and a secular group served as the headline band.

In the initial report of examination issued to XXXX on 06/22/2006, the Service proposed revocation of XXXX's exempt status based on the analysis of its activities as follows:

Consideration was given to categorizing the mixed concerts as secular, as the religious aspects of the event were incidental to the entire effort. However, to be reasonable, an attempt was made to allocate a portion of the mixed events to religious aspects. Opening act typically perform for no more than 30 minutes with the average concert lasting approximately 3 hours. In these situations, 17% of the activity is deemed religious.

In 20 a total of 38 concerts were held. Of those, 15 were religious in nature. Another 6 were categorized as mixed, religious/secular. Allowing 17% of 6 concerts as religious, provides for the equivalent of one additional religious event, for a total of 16. This number of events over the entire year yields exempt of activity 41%.

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20 - 39 Concerts: 16 Christian = 41%
19 Non-Christian = 58%

In 20 a total of 47 concerts were held. Of those, 13 were religious in nature. Another 9 were categorized as mixed, religious/secular. Allowing 17% of 9 concerts as religious, provides for the equivalent of two additional religious event, for a total of 15. This number of events over the entire year yields exempt of activity 32%.

20 - 47 Concerts: 15 Christian = 32%
32 Non-Christian = 68%

In 2004 a total of 71 concerts were held. Of those, 6 were religious in nature. Another 12 were categorized as mixed, religious/secular. Allowing 17% of 12 concerts as religious, provides for the equivalent of two additional religious events, for a total of 8. This number of events over the entire year yields exempt of activity 11%.

20 - 71 Concerts: 8 Christian = 11%
63 Non-Christian = 88%

Based on the above Facts and Law, the Internal Revenue Service has concluded that the activities conducted by are not exclusively charitable, religious, or educational as required for organizations exempt under IRC §501(c)(3) because the activities did not primarily accomplish an exempt purpose specified in IRC §501(c)(3).

The organization was and is engaged in and primarily responsible for the booking, promoting and sponsoring of musical acts in a secular environment with no indication that activities have an exempt or religious purpose.

Also organization is responsible for all aspects relating to finance, management and licensing with the Alcohol Beverage Control. Obtaining licenses and permits to sell alcoholic beverages are not normally activities engaged in for an exempt religious purpose. All activities that

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organization has primarily controlled and engaged in are activities similar to those of a for profit entity.

xxxxx submitted a protest to the initial report of examination on 08/25/2006. The protest has been considered and the following modifications have been made to the Government's position.

Additional analysis has been completed based on taxpayers rebuttal that prior analysis that evaluates time is inaccurate. Therefore, analysis recomputed to attribute all events/activities and computation determination of exempt vs. non-exempt and Christian vs. Non-Christian which will now allocate any activity/event that had a Christian performance as indicated by documentation submitted to RA as Christian regardless of the time of performance. Any activity/event that did not have any Christian performer was allocated as a non-Christian activity.

Please note: Number of total activities/events different from POA computation totals. RA has documentation of additional events that POA did not. Also POA included in computation of Christian activity any reference to act being Christian. For example, there were several reference indicated on documentation submitted by EO that although there was not a Christian opening act, the main act was a Christian in his beliefs although they music is strictly secular. No Christian music/activity was performed at event/activity; therefore RA did not count or allocate those as Christian acts but rather as Non-Christian activities because to exempt purpose activity was performed during event/activity.

Re-computation of Christian vs. Non-Christian events is as follows:
 *Non-exempt activities w/ the possibility of an exempt purpose activity to occur (per TP's rebuttal).

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Year Ended 12/31/20			
Event/Activity	Total Events	Non-Christian	Christian
Series	118	33	85
Non-Concert Series	19	0	19
Xxxx	20	15	5
Total	157	48	109

Year Ended 12/31/20			
Event/Activity	Total Events	Non-Christian	Christian
Series	9	3	2
Non-Concert Series	18	0	18
Xxxx	31	22	9
Total	52	25	27

Year Ended 12/31/20			
Event/Activity	Total Events	Non-Christian	Christian
Non-Concert Series	8		8
Xxxx	33	27	6
Xxxx	15	11	4
Xxxx	15	13	2
Total	71	51	20

Total for 12/31/20 - 12/31/20			
Year	Total Events	Non-Christian	Christian
12/31/20	157	48	109
12/31/20	52	25	27
12/31/20	71	51	20
Grand Totals	280	124	156

The re-computation analysis suggests xxxx's primary activities being considered as Christian activities are 55% of total and non-exempt activities are 44%. Therefore, EO would meet the IRC §501(c)(3)

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operational test of engaging primarily (more than 50%) in activities which accomplish one or more of the exempt purposes.

Also based on the re-computation and facts indicated in the taxpayer's rebuttal, RA concludes that although EO's exempt activity meets the portion of the operational test that exempt activity is "primary" they do not meet the requirement that the non-exempt portion can not be substantial (more than 15%) as indicated in the organization test for a 501(c)(3) organization.

The non-exempt activities (as indicated by the "above) based the revised computation is 44% of the total activities performed, while 54% would be considered an exempt activity of total activities which EO conducted. Furthermore of the 44% of non-exempt activities that the taxpayer conducted, only 28 of 114 activities had an exempt purpose.

As indicated in rebuttal, the EO states "While it is true that xxxxx "sponsors" and is the beneficiary of the xxxxx concerts, xxxxx does not promote those concerts and the promoter chooses and contracts with the performing talent".

That being a true fact, why would EO engage in an activity in which it has no or minimal control in determining if activity will include an Christian act and therefore be considered an exempt activity?

TAXPAYER POSITION

xxxxx does not agree that it is not operated exclusively for an exempt purposes and suggest that it is are merely an organization that "assist" but does not "promote or book" acts.

CONCLUSION

After consideration of the facts and arguments presented in xxxxx's protest, it is still our position xxxxx does not qualify for exemption under IRC §501(a) as organization described in IRC §501(c)(3) effective January 1, 2002.